

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
KENNETH J. MURPHY
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U.S. DISTRICT COURT
SOUTHERN DIST OHIO
WEST DIV CINCINNATI

LOUIS MERRIWEATHER-PETITIONER;
-VS-

JAMES ERWIW-RESPONDENT;

CASE NO.C-1-02-369

(Spiegel,J.;Hogan,M.J.)

MERRIWEATHER'S MEMORANDUM IN OPPOSITION
TO THE MAGISTRATE'S REPORT AND RECOMMENDATION

Now comes Petitioner Merriweather,(hereafter Petitioner),an unlettered pro se Petitioner,in opposition to the order issued by the Magistrate Judge and received within the Institutional mail by Petitioner on Sep.17,2003 at Chillicothe Corrections,first,Petitioner respectfully requests that this honorable court take judicial notice that the state of Ohio through the Hamilton County Common Pleas Court ,has placed petitioner in the almost insurmountable position of having to defend his Habeas petition without aid of any legally trained person,and against a State and County which has deliberately withheld evidence from petitioner for over 6 years[whereas if this evidence had been made known 6 years ago,the outcome of petitioner's trial proceeding would have "no doubt"been different]petitioner will attempt to outline what he sees as good reasons why this honorable court should grant his request for an evidentiary hearing.Magistrate Hogan failed to outline all the factual issues here,petitioner pleads with this honorable court to take notice that if petitioner is"rambling"it is because petitioner"had no ideal what he is doing,only that petitioner is trying to get this honorable court to see that something"horriblely"went wrong at trial court proceeding for so many violations of petitioner's Constitutional rights to take place.

MEMORANDUM IN OPPOSITION

Petitioner in his habeas and other filing in the instant case at bar, has raised several claims, which this petitioner with only address those which petitioner considers **"paramount"** to petitioner's cause:

1). Ineffective Assistance of Counsel;

A). Trial counsel pleaded Petitioner guilty to 4 counts of rape without benefit of discovery, which was filed before this court on 9/2/03

B). Trial counsel orally, directly, personally told petitioner and his family, immediately after sentencing "that petitioner could not appeal guilty pleas agreements and sentencing".

C). Trial counsel signed a two(2) part plea agreement without a date, along with the Hamilton county Prosecutor, affirming that Petitioner was competent without any medical examination and with prior knowledge that at the time of trial court proceeding, Petitioner was orally taking several psychotropic medications [which altered Petitioner's state of mind and his will].

D). Trial court transcript of May 15, 1997, affirm Petitioner orally, directly telling trial court that he was presently under several [mind altering] medications, and when trial court questioned trial counsel, trial counsel down played such medication(s).

The Magistrate gives great weight to the fact that Petitioner signed a two(2) part alleged plea agreement (without a date), the Magistrate states that by Petitioner's signing this form it **"believes his assertion"** of trial court and defense counsel not orally, directly, informing Petitioner of his right to timely direct appeal of his alleged voluntary guilty pleas, the Magistrate did not address the issue that trial counsel and Hamilton county Prosecutor signed the same second part alleged agreement certifying that Petitioner was not under any drugs at trial court proceeding and was competent to enter into such plea agreements, whereas if the Magistrate states this believes Petitioner's claim then it seems to reason that it also give great weight to Petitioner's claim of ineffective assistance of trial counsel.

Whether petitioner was diligence or not, whether all these constitutional violations took place or not is **"secondary"**, the real issue before this,

court is that "the state and Hamilton County Common Pleas Court lacked jurisdiction of the subject matter or over the Petitioner of the applicant in the state court proceeding".

This claim was raised before this honorable court on Sep.2,2003,which respondent failed to addres or object too in a timely manner.

District Court had inherent discretionary authority to order an evidentiary hearing regarding effectiveness of habeas petitioner's state court trial counsel".Judicial notice should be strongly taken here that trial court's trancripts and documenations are slient as to whether trial strictly complied with criminal Rule 11,and for over 6 ½years Petitioner has been requesting for sentencing transcript of June 18,1997,respondent even refuse to procedure trial court sentencing transcript to this honorable court.

Respectfully Submitted

Louis Merriweather, #348-451
P.O.Box 500
Chillicothe, Ohio 45601-0990

CERTIFICATE OF SERVICE

I Lous Merriweather,petitioner herein do hereby certify that a true copy of the foregoing objection was forward by U.S.mail first class mail per-paied to Am Pro at 140 E. Town Columbus, Ohio 43027, on this 23rd day of Sept 20003



Louis Merriweather

The should please take not that Petitioner is providing an exhibit,that affirms that Petitioner did not receive Magistrate's ~~1~~³-order till Sep.17,2003.